

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 245 of 2003.

Date of decision : March 14, 2007.

The General Manager, Punjab Roadways, Tarn Taran,

.....Appellant

through Mr.A.G.Masih, Sr.DAG, Punjab.

v.

Sardar Masih & another,

.....Respondents

through Mr.B.R.Mahajan, Advocate.

**CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA**

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

This Letters Patent Appeal is directed against the judgment of the learned Single Judge, dated 26.2.2003, whereby the award of the Labour Court, dated 7.11.1985 was set aside.

A brief factual background of the case would be appropriate.

Respondent No.1-workman was appointed as a conductor in the services of Punjab Roadways on 19.7.1978. His services were discontinued from 9.3.1979. He impugned his termination by way of a civil suit, which was dismissed on the ground that the civil Court did not have jurisdiction. Respondent No.1 thereafter raised an industrial dispute, which was referred

by the State Government to the Labour Court, Amritsar. In his statement of claim, respondent No.1 pleaded that the order of termination was void for violation of the rule of last come first go inasmuch as a number of persons, appointed after respondent No.1, had been retained in service and no reasons had been assigned for termination of his services.

The appellant resisted the claim. The Labour Court dismissed the reference by holding that the appointment was adhoc in nature and as the impugned termination did not lack bona fides or was the result of unfair labour practice, and the workman not having completed 240 days, he was not entitled to any relief.

Respondent No.1 filed the writ petition, wherein it was pleaded that the condition of rendering 240 days was irrelevant for the purpose of Section 25F and not Section 25G or H of the Industrial Disputes Act and, therefore, the award of the Labour Court be set aside.

Learned Single Judge, vide the impugned judgment, accepted the aforementioned contention and after placing reliance upon a judgment of the Hon'ble Supreme Court in Central Bank of India vs. S.Satyam and others, JT 1996(7) SC 181, held that even though the workman had not worked for 240 days in a calendar year, the employer was duty bound to comply with the rule of last come first go, as enshrined in Section 25-G of the aforementioned Act. Consequently, the appellant was directed to reinstate respondent No.1 in service with the benefit of continuity of service and all other service benefits, admissible to an adhoc employee except back wages. As regards the claim of back wages, the workman was left free to avail his remedy, under Section 33-C(2) of the Industrial Disputes Act.

Counsel for the appellant contends that as the workman had not completed 240 days, the principle of law, as enshrined in Section 25G of the Industrial Disputes Act was not applicable. It is contended that the rule of first come last go is only applicable to a workman, who has completed 240 days.

Counsel for respondent No.1, however, states that the controversy in the present case has been re-considered by the Hon'ble Supreme Court in Bhogpur Co-op Sugar Mills Ltd vs Harmesh Kumar, 2007(1) SCT 277, wherein it has been held that the requirement of 240 days has no applicability to Section 25G and H of the Industrial Disputes Act.

We have heard learned counsel for the parties and perused the paper book.

We are satisfied that the impugned judgment does not suffer from any error of law as would necessitate interference. The Hon'ble Supreme Court in Bhogpur Co-op Sugar Mills Ltd's case (supra), after taking into consideration a number of judgments on the controversy in hand, held as follows :-

“9. We are not oblivious of the distinction in regard to the legality of the order of termination in a case where Section 25-F of the Act applies on the one hand, and a situation where Section 25-G thereof applies on the other. Whereas in a case where Section 25-F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions of Sections 25G and 25H thereof

he may not have to establish the said fact. (See **Central Bank of India v. S.Satyam & Ors., 1996(4) SCT 143 (SC): (1996)5 SCC 419, Samishta Dube v. City Board, Etawah & Anr., 1992(2) SCT 284(SC): (1999)3 SCC 14, Regional Manager, SBI v. Rakesh Kumar Tewari 2006(1) SCT 451(SC): (2006)1 SCC 530 and Jaipur Development Authority v. Ram Sahai & Anr., Civil Appeal No.4626 of 2006 decided on 31st October, 2006).**”

We are satisfied that the controversy in the present appeal is squarely covered by the aforementioned judgment. The learned Single Judge rightly held that the rule of last come first go was applicable to the case of respondent No.1 and should have been complied with by the appellants.

In view of what has been stated above, as there is no merit in the present appeal, the same is dismissed.

**(VIJENDER JAIN)
CHIEF JUSTICE**

**(RAJIVE BHALLA)
JUDGE**

**March 14, 2007.
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